

## **REMARKS**

Claims 1-32 are pending. Reconsideration and allowance for the above-identified application are now respectfully requested in view of the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. NO ACQUIESCENCE AS TO POSITION ADVANCED BY THE EXAMINER**

Applicant notes that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner, and/or the merits of additional or alternative arguments.

### **II. PRIOR ART REJECTIONS**

#### **A. Rejection Under 35 U.S.C. § 102**

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Further, the identical invention must be shown in as complete

detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131.

The Examiner has rejected claims 1-9, 15-17, 23-27, and 30-31 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,195,612 to Pack-Harris ("*Pack-Harris*"). Applicants respectfully disagree.

Claim 1 requires, among other things "... receiving clinical data from the clinical system on at least one of an inbound data interface and a synchronous alert interface; storing the clinical data in an expert system database of the expert system; processing the clinical data in the expert system; generating an alert based on results of processing the clinical data; and sending the alert to the clinical system on at least one of a synchronous alert interface and an outbound alert interface." Claim 1, therefore claims data and/or alerts to be sent and received by both the clinical system and the expert system. In contrast, *Pack-Harris*, however, only allows data to be sent in one direction, from the pharmacy computer to the medical group computers at the other end of the process. As such, the Examiner has not established that *Pack-Harris* teaches, or even suggests, such an arrangement. *Pack-Harris* does not teach, or even suggest, at least receiving clinical data on an inbound data interface or a synchronous alert interface, storing or processing the clinical data on an expert system, or sending an alert to the clinical system on a synchronous alert interface or an outbound alert interface.

Similarly, as to the elements of dependent claim 2 and independent claims 15, 23, and 24, the Examiner has not established that *Pack-Harris* teaches or even suggests the claimed invention. In particular, *Pack-Harris* does not teach or suggest, (1) as claimed in dependent claim 2, (i) a method that includes receiving audit information on an audit action interface from the clinical system when the alert has been dismissed at the clinical system or updating an audit log in the expert system, (ii) at least a system or method wherein an expert system receives information from a clinical system after an alert has been dismissed, or (iii) a system or method for updating an audit log in an expert system, (2) as claimed in independent claim 15, at least a method or system for receiving an order from a clinical system on synchronous alert interface or an inbound data interface, processing the order to generate a response, and sending the response to the clinical system on a synchronous alert interface, an outbound data interface, or an outbound orders interface, or (3) as claimed in independent claim 23, at least a system or method for providing an element in the expert user interface for selecting at least one patient from the

patients in the clinical system, generating patient specific recommendations, receiving orders from the user accessing the expert system user interface, and sending orders to a clinical system on a synchronous alert interface, outbound data interface, or an outbound orders interface.

As to claim 31, the Examiner states that claim 31 recites subject matter contained in *Pack-Harris*. Applicants respectfully disagree. *Pack-Harris* does not teach, or even suggest, a system or method that includes an expert system adapted to store data. Furthermore, the *Pack-Harris* system and method does not have a clinical decision module coupled to the expert system database and adapted to generate alerts from the clinical data in the expert system database. Finally, the *Pack-Harris* system and method does not include an expert system interface engine capable of sending and receiving clinical data and alerts between the expert system and the clinical system using a synchronous alert interface, an outbound alert interface, an inbound alert interface, and inbound data interface, an outbound data interface, an outbound orders interface, or an audit action interface.

Inasmuch as the Examiner has not established that the identical inventions are shown in *Pack-Harris* in as complete detail as are contained in claims 1, 15, 23, and 31, and because the Examiner has not shown that *Pack-Harris* discloses the elements of claims 1, 15, 23, 31 arranged as required by those claims, Applicant respectfully submits that the Examiner has not established that *Pack-Harris* anticipates claims 1, 15, 23, or 31. For at least the foregoing reasons, Applicants respectfully submit that the rejection of claims 1, 15, 23, and 31, as well as the rejection of corresponding dependent claims 2-9, 16-17, 24-27, and 30 should be withdrawn.

#### **B. Rejection Under 35 U.S.C. § 103**

Applicant respectfully notes at the outset that in order to establish a prima facie case of obviousness, it is the burden of the Examiner to demonstrate that three criteria are met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP* § 2143.

The Examiner has rejected claims 10-14, 18-22, and 28-30 under 35 U.S.C. § 103 as being unpatentable over *Pack-Harris*. Specifically, The Examiner asserts that *Pack-Harris*

discloses the elements of claims 1, 15, and 23, and that the “use of alert messages according to proprietary message definitions, industry standard message definitions, HL7 protocol, receiving clinical data from an interface engine disposed on a clinical module, and having computer executable instructions for database systems are well known in the art.” Office Action, p. 3. As discussed below, this rejection is problematic for several reasons.

At the outset, Applicants note that it appears that the Examiner is relying on personal knowledge as a basis for rejecting claims 10-14, 18-22, and 28-30. Particularly, the Examiner has simply stated that the “use of alert messages according to proprietary message definitions, industry standard message definitions, HL7 protocol, receiving clinical data from an interface engine disposed on a clinical module, and having computer executable instructions for database systems are well known in the art,” and the Examiner has not identified any references or other materials as being obvious to combine with the purported teachings of *Pack-Harris*. Office Action, p. 3. In view of the foregoing, and pursuant to 37 C.F.R. 1.104(d)(2), Applicant hereby respectfully requests an Examiner affidavit that: (i) specifically identifies any and all reference(s), other than those that have been specifically cited by the Examiner, upon which the obviousness rejection of claims 10-14, 18-22, and 28-30 is based; and (ii) provides complete details concerning the reasoning and analysis of the Examiner concerning those references as those references are purported to apply to the rejection of claims 10-14, 18-22, and 28-30.

Even assuming, *arguendo*, that the means stated by the Examiner are well known in the art, the rejection made by the Examiner is problematic for other reasons as well. Claims 10-14 depend from claim 1, claims 18-22 depend from claim 15, and claims 28-30 depend from claim 23. By virtue of their dependence from independent claims 1, 15, and 23, each of these dependent claims require all the elements of their corresponding independent claims. As discussed at II.A. above however, the Examiner has not established that the limitations of the independent claims, in combination with the other limitations of the rejected claims, are taught or suggested by *Pack-Harris* or any other reference(s). Thus, even if the *Pack-Harris* system and method is modified by the means alleged by the Examiner to be well known in the art in the purportedly obvious fashion advanced by the Examiner, the resulting combinations fail to include all the limitations of the rejected claims.

As to the motivation for the purportedly obvious combination, the Examiner has asserted that “[i]t would have been obvious to one [of] ordinary skill in the art at the time the invention

was made to incorporate the above stated means into the system of Pack-Harris, since this would have allowed efficient communication of information in the system by providing structured dissemination of information in the system.” Office Action, p. 3 (*Emphasis added*). Applicant notes at the outset that “efficient communication” and “structured dissemination” are relative terms whose definitions are known only to the Examiner. For example, it is not at all apparent what reference point(s), if any, the Examiner is using as a basis to assert that efficiency of communication or dissemination of information in a structure manner would necessarily be achieved as a result of the purportedly obvious combination. For at least this reason, Applicant submits that the Examiner has failed to establish the existence of a suggestion or motivation to make the purportedly obvious combination.

In light of the foregoing, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness with respect to claims 10-14, 18-22, and 28-30, at least because the Examiner has not established that the references and allegedly well know means, when combined, teach or suggest all the limitations of claims 10-14, 18-22, and 28-30. Applicant thus respectfully submits that the rejection of claims 10-14, 18-22, and 28-30 should be withdrawn.

As a final note, the Examiner indicated on the Office Action Summary that claim 32 is rejected. However, the Examiner failed to provide any reason for rejecting claim 32 in the Detailed Action. If the Examiner does not reject claim 32, Applicant respectfully requests that claim 32 be promptly allowed. If the Examiner intended to reject claim 32 under 35 U.S.C. § 102 or § 103, as he did with the other claims, Applicants respectfully request withdrawal of the rejection. Claim 32 depends from claim 31. By virtue of its dependence from independent claim 31, dependent claim 32 requires all the elements of dependent claim 31. As discussed at II.A. above however, the Examiner has not established that the limitations of independent claim 31, in combination with the other limitations of the rejected claim, are taught or suggested by *Pack-Harris* or any other reference(s).. For at least the foregoing reasons, Applicant respectfully submits that any rejections of claim 32 should be withdrawn.

**CONCLUSION**

In view of the foregoing, Applicants believe the claims are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 27<sup>th</sup> day of June, 2006.

Respectfully submitted,



FRASER D. ROY  
Registration No. 45,666  
Attorney for Applicant  
Customer No. 022913

JCS:jdj  
DH000000340V001